

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EDWARD GREEN,	:	
Petitioner,	:	CIVIL ACTION
	:	
v.	:	NO. 11-1811
	:	
MICHAEL CURLEY, et al.,	:	
Respondents.	:	
	:	

ORDER

AND NOW, this 26th day of September 2011, upon consideration and careful review of the Petition for Writ of Habeas Corpus (Doc. No. 1), the Response of the Commonwealth (Doc. No. 4), and the Report and Recommendation of United States Magistrate Judge Timothy R. Rice (Doc. No. 5), to which no objection has been filed, it is hereby **ORDERED** as follows:

1. The Report and Recommendation (Doc. No. 5) is **APPROVED and ADOPTED**;
2. The Petition (Doc. No. 1) is **DISMISSED without prejudice**;¹
3. There is no probable case to issue a certificate of appealability;
4. The Clerk of Court is directed to **CLOSE** this case.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe, J.
CYNTHIA M. RUFE, J.

¹ A petitioner who is in custody pursuant to the judgment of a state court may appeal such judgment to a federal district court on the ground that the detention is in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). However, a petitioner is required to exhaust any available state court remedies before seeking redress in federal court. 28 U.S.C. § 2254(b)(1). “An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.” 28 U.S.C. § 2254(c). As of the date of this Order, Mr. Green’s Post Conviction Relief Act (“PCRA”) petition, in which he asserts the same claims as asserted in the Petition before this Court, is currently pending before the PCRA Court. See Commonwealth v. Green, CP-51-CR-0906991-2003. Thus, Mr. Green has not fully exhausted his available state court remedies and his Petition was prematurely filed. Accordingly, the Court will dismiss the Petition without prejudice.